

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 201910398	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/01/2019 2:10 AM	Location of Incident: West 25th Street between Mermaid Avenue and Neptune Avenue	Precinct: 60	18 Mo. SOL 6/1/2021	EO SOL 1/16/2022	
Date/Time CV Reported Mon, 12/02/2019 10:56 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 12/02/2019 10:56 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Timothy Brovakos	00000	943025	060 PCT
2. POM Connor Keane	26409	967138	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mubbashar Zahid	03267	965634	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) was an occupant.	
B.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos frisked § 87(2)(b)	
C.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos searched § 87(2)(b)	
D.LT Timothy Brovakos	Discourtesy: Lieutenant Timothy Brovakos spoke discourteously to § 87(2)(b)	
E.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos searched the vehicle in which was an occupant.	
F.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g)		

### Case Summary

On December 2, 2019, § 87(2)(b) filed the following complaint by telephone via the CCRB's DIRAD system.

On December 1, 2019, at approximately 2:10 AM, at West 25th Street between Mermaid Avenue and Neptune Avenue in Brooklyn, § 87(2)(b) vehicle was pulled over by Lieutenant Timothy Brovakos, Police Officer Mubbashar Zahid, and Police Officer Connor Keane of the 60th Precinct (**Allegation A: Abuse of Authority – Vehicle Stop, § 87(2)(g)**). Lieutenant Brovakos advised § 87(2)(b) that they had been observing his attempts to parallel park and that his driving indicated he may be intoxicated. Lieutenant Brovakos also told § 87(2)(b) that he could see marijuana residue on the dashboard and proceeded to order § 87(2)(b) out of the vehicle. The officers frisked and searched § 87(2)(b) person and then searched his vehicle (**Allegations B, C, E: Abuse of Authority – Frisk, Search, Vehicle Search, § 87(2)(g)**). While doing so, Lieutenant Brovakos continued speaking with § 87(2)(b) and used profanity during the exchange (**Allegation D: Discourtesy – Word, § 87(2)(g)**). The officers ultimately left the scene without issuing § 87(2)(b) a summons. Lieutenant Brovakos failed to provide § 87(2)(b) with a business card (**Allegation F: Abuse of Authority – Failure to provide a business card, § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

Video footage of the incident was obtained from Body-Worn Cameras (BWCs) worn by Lieutenant Brovakos, Police Officer Zahid, and Police Officer Keane. They are attached to IA #s 67 - 69 (Board Review 05-07) and Summarized in IA #70 (Board Review 08).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Lieutenant Timothy Brovakos frisked § 87(2)(b)**

**Allegation (C) Abuse of Authority: Lieutenant Timothy Brovakos searched § 87(2)(b)**

**Allegation (D) Discourtesy: Lieutenant Timothy Brovakos spoke discourteously to § 87(2)(b)**

**Allegation (E) Abuse of Authority: Lieutenant Timothy Brovakos searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) was interviewed on December 9, 2019 (Board Review 01). Lieutenant Brovakos was interviewed on March 11, 2020 (Board Review 02). Police Officer Keane and Police Officer Zahid were interviewed on December 16, 2020 (Board Review 03-04).

It is undisputed that on December 1, 2019, at approximately 2:10 AM, while attempting to parallel park his vehicle on West 25<sup>th</sup> Street, § 87(2)(b) vehicle was stopped by Lieutenant Brovakos, Police Officer Keane, and Police Officer Zahid. Upon engaging § 87(2)(b) Lieutenant Brovakos informed him that the manner in which he was attempting to parallel-park – by repeatedly reversing into a curbside space that was obviously too small to fit his vehicle – indicated that he was driving under the influence. Lieutenant Brovakos requested § 87(2)(b) driver's license. While doing so, Lieutenant Brovakos observed what he believed to be marijuana residue on the dashboard and ordered § 87(2)(b) out of the vehicle. As he was being frisked and searched, Lieutenant Brovakos

conversed with § 87(2)(b) and used profanity during the exchange. Lieutenant Brovakos then searched the vehicle. § 87(2)(b) was released without being summonsed. At issue is whether Lieutenant Brovakos' actions and language were justified.

§ 87(2)(b) stated that he had not consumed any drugs or alcohol prior to this incident and that he never used marijuana inside his vehicle. Upon reaching West 25<sup>th</sup> Street, § 87(2)(b) initially thought he found a sufficiently wide curbside parking space between two other vehicles; but after making several attempts to parallel-park into the space, over approximately two minutes, he realized it was too small and continued down the street, at which point the officers activated their lights and sirens. § 87(2)(b) denied maneuvering his vehicle in an irregular, erratic, or otherwise unusual manner.

Approaching the driver's side window, Lieutenant Brovakos told § 87(2)(b) that the officers had seen him, "Trying to fit into a small spot – we need to make sure you are not drunk." § 87(2)(b) denied being intoxicated and provided his driver's license and registration when asked. As he did so, Lieutenant Brovakos, with his flashlight shining into the vehicle, said he could see "weed" on the dashboard. § 87(2)(b) stated that Lieutenant Brovakos was referring to what he described as "sugar" remnants from candy that he had eaten earlier. Lieutenant Brovakos proceeded to order § 87(2)(b) to step outside. After he was frisked and searched, § 87(2)(b) observed Lieutenant Brovakos conducting a full search of the main cabin and all of its compartments, as well as the trunk. When Lieutenant Brovakos recovered a small glass pipe from the glove compartment, § 87(2)(b) told him that it was a friend's and likely for tobacco use. Lieutenant Brovakos put the pipe back inside without any questions. After completing the search and finding no contraband, § 87(2)(b) was released. Besides Lieutenant Brovakos' initial remarks regarding the substance on his dashboard, the officers never questioned him any further about marijuana, alcohol, or intoxication. § 87(2)(b) did not raise any allegations of discourteous language.

Lieutenant Brovakos stated that he and his partners happened to turn onto West 25<sup>th</sup> Street while travelling behind § 87(2)(b) as they were en route to a take a break at the stationhouse. Upon doing so, they encountered § 87(2)(b) sedan attempting to parallel park into a curbside space between two vehicles. Lieutenant Brovakos stated that it was clear to him that the space in question was "obviously" too small for the sedan to fit; the gap was only one vehicle-length wide, whereas a driver typically required a space of two vehicle-lengths to parallel-park safely. Lieutenant Brovakos stated: "Any driver of sound mind would have been able to see that upon approaching the spot." As § 87(2)(b) was attempting such an obviously impossible task, Lieutenant Brovakos suspected that he may be driving under the influence. From his prior experience effecting such stops, he also knew that intoxicated drivers often attempted to evade police contact by turning into any curbside spacing available to them. Lieutenant Brovakos did not see § 87(2)(b) commit any other traffic infractions but decided to conduct a stop based on the suspicion that he was possibly intoxicated. He specified that the mere fact of the parking attempt – especially because it was being done with a police vehicle behind him – was the basis of his suspicion.

Lieutenant Brovakos stated that when he engaged § 87(2)(b) through the open driver's side window, he immediately detected a heavy odor of recently burned marijuana emanating from within the vehicle. Additionally, Lieutenant Brovakos observed small granules of marijuana residue scattered on top of the center console. Because of these observations, Lieutenant Brovakos ordered § 87(2)(b) out of the vehicle and instructed either Police Officer Keane or Police Officer Zahid – he did not recall which, to frisk and search § 87(2)(b) person. Lieutenant Brovakos then search the vehicle and confirmed that the granules he had seen earlier were in fact residual traces of marijuana. Lieutenant Brovakos also found a glass pipe inside the center console, which he believed was

possibly drug paraphernalia. However, because the residual amount of marijuana on the console was too minimal to justify an arrest, and because the officers determined that § 87(2)(b) was not otherwise intoxicated, they released him without taking any enforcement action.

Police Officer Zahid and Police Officer Keane's accounts were consistent with Lieutenant Brovakos'.

All three officers activated their BWCs shortly prior to stopping § 87(2)(b) vehicle. The collective footage at the time of activation appears to show the police vehicle in motion. At approximately thirty seconds into the video footage, the police vehicle's turret lights begin to flash. Upon stopping and exiting their vehicle, the officers approach § 87(2)(b) vehicle, as it remains standing stationary in the middle of the street (Board Review 05-08).

As seen from Lieutenant Brovakos' BWC (Board Review 05), the ensuing conversation between him and § 87(2)(b) first concerns the earlier parallel parking attempt (not visible in any of the preceding footage). Lieutenant Brovakos expresses his suspicion that § 87(2)(b) is intoxicated, stating, "I just wanted to make sure you aren't drunk or something, that you would think that you could get into that spot..." At 00:54 seconds into the recording, Lieutenant Brovakos then asks § 87(2)(b) "What is that – what is that down on your – all over your dashboard?... Just some weed?" § 87(2)(b) says he has no marijuana and accuses the officers of following him without cause. Lieutenant Brovakos says, "What are those crumbs?" § 87(2)(b) says he does not know. Lieutenant Brovakos responds, "Well I know what it is, it is marijuana." (1:09 seconds) At approximately 1:45 seconds into the recording, Lieutenant Brovakos orders § 87(2)(b) to exit his vehicle with his driver's license and registration, stating, "No, I wasn't following you – maybe the marijuana is making you paranoid" (Board Review 05, 08).

Once outside, § 87(2)(b) is frisked and searched (at 2:10 in the recording). Between 2:20 and 2:42 in his BWC footage, Lieutenant Brovakos continues to converse § 87(2)(b) as follows: Lieutenant Brovakos says: "Are you okay man? Just be a gentleman, I am treating you with respect...I'm not throwing you on the car, I'm treating you like a man, so act like a man. I'm not treating you like a piece of shit." § 87(2)(b) again accuses the officers of following him for no reason. Lieutenant Brovakos replies, "I swear to you, we were going to the fucking bathroom, believe it or not, we're not following you." (2:41 seconds)

At approximately 7:00 minutes in the recording, Lieutenant Brovakos conducts a search of the vehicle's main cabin and trunk. When he recovers a small glass pipe, he expresses to § 87(2)(b) that he was not wrong to suspect that there was marijuana in the vehicle. Due to the minimal lighting, the earlier-referenced marijuana residue is not readily discernible in the BWC footage. Ultimately, after finding no other evidence of contraband, Lieutenant Brovakos tells § 87(2)(b) that he does not care about "a little weed." § 87(2)(b) does not request business cards from anyone, and none of the officers independently provide one to him.

New York Vehicle and Traffic Law (VTL) § 1192 prohibits the operation of a motor vehicle by a driver whose "ability...is impaired by the consumption of alcohol." (N.Y. VTL § 1192; Board Review 09)

The police may stop a vehicle when there is at least a reasonable suspicion that the driver or occupants have committed, are committing, or are about to commit a crime, or when there is probable cause to believe that the driver has committed a traffic violation (People v Sobotker, 43 NY2d 559 [1978]; Board Review 10)

An officer's observation of "erratic driving" may provide a basis for stopping a vehicle and may supply reasonable suspicion that the driver is driving while impaired (People v Simmons, 58 AD2d 524 [1st Dept 1977]; Board Review 11). However, New York courts have construed erratic driving as the objectively "dangerous" operation of a motor vehicle, when "based on specific and articulable facts," that poses "a clear and present threat to public safety." (People v Lochan, 23 Misc 3d 1106[A] [Crim Ct, Queens County 2009]; Board Review 12) For example, the courts have found nothing "erratic" about the driving of a motorist who, after making eye contact with officers, "floored the gas pedal" and left the scene with tires squealing – actions characterized by the court as "hardly uncommon." (People v Simmons, 58 AD2d 524, 524 [1st Dept 1977]; Board Review 11) Similarly, the courts have ruled that a vehicle observed to "stop and go" and "lunge back and forth," in a manner suggesting [the motorist] "might not know how to drive," did not constitute erratic driving. (People v Davis, 233 AD2d 148 [1st Dept 1996]; Board Review 13) Likewise, the courts determined that an officer's observation of a vehicle travelling "very slowly," in "short, jerky movements," did not justify a vehicle stop for erratic driving. (People v Dearstyne, 50 AD2d 1029, 1029 [3d Dept 1975]; Board Review 14) On the other hand, courts have found that a motorist was driving erratically when they were "unable to maintain control of [their] lane and swerving from side to side [repeatedly]," (People v Whitehead (Joseph), 65 Misc 3d 150[A] [App Term 2019]; Board Review 15); or when they crossed over double yellow lines and nearly struck a police vehicle (People v Mahncke, 34 Misc 3d 10 [App Term 2011]; Board Review 16); or when they nearly caused their vehicle to collide with bicyclists (People v Odenweller, 137 AD2d 15, 16 [3d Dept 1988]); Board Review 17).

When officers detect the odor of marijuana emanating from a vehicle, they have probable cause to search the entire vehicle and its occupants. (People v. Chestnut, 36 NY2d 971 [1975]; Board Review 18)

N.Y.P.D Patrol Guide (P.G.) Procedure 200-02 requires officers to "maintain a higher standard of integrity than is generally expected of others" and to "respect the dignity of each individual and render...services with courtesy and civility." (Board Review 19). An officer's use of profanity may be "excusable" if made "in the context of a dynamic situation." However, absent such circumstances, the use of profanity against a civilian – when it serves no legitimate law enforcement purpose – is prohibited (Disciplinary Case No. 2015-15012 [June 2017]; Board Review 20).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.**

Lieutenant Brovakos stated that § 87(2)(b) never asked for a business card, and that one was not independently provided to him at the conclusion of the vehicle stop. Lieutenant Brovakos believed that officers are required to provide a business cards only in the event of a level two or level three street encounter.

Under New York City Administrative Code 14-174, officers must offer a business card to the subject of law enforcement activity, at the conclusion of any law enforcement activity which results in frisks and searches of individuals and vehicles but that does not result in a summons or arrest (Board Review 21).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.

- Lieutenant Brovakos has been a member-of-service for 14 years and has been a subject in 29 cases and 16 allegations, two of which were substantiated in two cases:
  - Case 201500206 involved a substantiated vehicle search allegation. The Board recommended Command Discipline B and the NYPD imposed Formalized Training as penalty.
  - Case 201905132 involved a substantiated discourtesy allegation. The Board recommended Command Level Instructions and the NYPD imposed Instructions as penalty.
  - § 87(2)(g)

## Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim search request was submitted to the New York City Office of the Comptroller on June 7, 2021; the results will be added to the case file upon receipt.
- Per the Office of Court Administration, § 87(2)(b) has not been convicted of any crimes in New York City (Board Review 27).

Squad No.: 02

Investigator: /sprakash Inv. Santosh Prakash 6/17/21  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang      IM Alexander Opoku-Agyemang      11/16/21  
Signature      Print Title & Name      Date